Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

SINGLE APPENDIX

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-145

THE NORTHERN CHEYENNE TRIBE,
Petitioner,
v.
WILLIAM HOLLOWBREAST, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 26, 1975
CERTIORARI GRANTED OCTOBER 14, 1975

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RELEVANT DOCKET ENTRIES

Date	*Proceedings*	*Single Appendix Page No.*
1970		
July 2	Complaint filed ....(not included)	
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1971		
September 30	Order and memorandum opinion filed denying defendants' motions to join United States as involuntary plaintiff, applications for temporary injunction, and motions to dismiss for lack of jurisdiction; and holding that action is proper class action ....(not included)	

Date	*Proceedings*	*Single Appendix Page No.*
1972		
January 10	Order filed denying defendants' motions to dismiss, to quash service, and to permit interlocutory appeal ....(not included)	
January 12	Memorandum opinion filed supplementing above order of January 10, 1972 ....(not included)	
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September 29	Final order and opinion filed (*See* Petition for Writ of Certiorari at ....A-12-29)	
November 14	Final judgment filed (*See* Petition for Writ of Certiorari at ....A-36-37)	
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December 26	Tribal defendants' notice of appeal to the Ninth Circuit Court of Appeals filed ....(not included)	

Date	*Proceedings*	*Single Appendix Page No.*
December 26	Defendants Williamson and Bowen's notice of appeal to Ninth Circuit Court filed .....(not included)	
December 29	Defendant Littlebird's notice of appeal to Ninth Circuit Court of Appeals filed .....(not included)	
1974		
October 17	Ninth Circuit Court of Appeals judgment filed reversing District Court judgment. (*See* Petition for Writ of Certiorari at .....A-33-34)	
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1975		
February 28	Ninth Circuit Court of Appeals order filed recalling mandate and granting leave to file untimely petition for rehearing	44
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July 26	Petition for Writ of Certiorari filed and docketed in United States Supreme Court .....(not included)	
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IN THE

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ON WRIT OF CERTIORARI TO THE
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FOR THE NINTH CIRCUIT

SINGLE APPENDIX

DISTRICT COURT — AMENDED COMPLAINT
Filed Sept. 8, 1970

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THE NORTHERN CHEYENNE TRIBE, *Plaintiff*, v. WILLIAM HOLLOWBREAST, GRACE KINGFISHER, RAYMOND BRADY, SR., KENNETH BEARTUSK, WINONA FOX, JAMES LIMBERHAND, HENRY FISHER, BESSIE ELKSHOULDER, NELLIE ROBINSON, RAYMOND HARRIS, SR., DELORES WALTERS MURDOCK and ELVA L. LITTLECHIEF WILLIAMSON, individually and as representatives of all allottees, their heirs or devisees who received allotments pursuant to the Act of Congress of June 3, 1926, as amended, *Defendants*.	CIVIL CAUSE NO. 883

COMES NOW the plaintiff and for its cause of action complains and alleges as follows:

I.

This is an action to determine whether the allottees who received allotments pursuant to the Act of June 3, 1926, as amended, their heirs or devisees, received a vested property right in the coal or other minerals, including oil, gas and other natural deposits in and under the lands allotted to said allottees of the Northern Cheyenne Tribe under said Act which is protected by the fifth amendment. The plaintiff is authorized to bring

this action by and under the provisions of Public Law 90-424 approved by the President on July 24, 1968 (82 Stat. 424, 425). Attached to this Complaint and made a part thereof, as Appendix "A", is a true and correct copy of said Public Law. The jurisdiction of this Court is confirmed by said Public Law.

II.

The plaintiff, Northern Cheyenne Tribe, also known as the Northern Cheyenne Tribe of the Tongue River Reservation, Montana, is a federal corporation chartered under the Act of June 18, 1934, (48 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378) and is a recognized Indian Tribe organized under a Constitution and By-Laws ratified by the Tribe on November 2, 1935 and approved by the Secretary of the Interior of the United States on November 23, 1935, and amended by ratification by the Tribe on April 12, 1960 and approved by the Secretary of the Interior of the United States on July 8, 1960, all pursuant to said Act.

III.

This is a class action and the same is brought by the plaintiff against the defendants, William Hollowbreast, Grace Kingfisher, Raymond Brady, Sr., Kenneth Beartusk, Winona Fox, James Limberhand, Henry Fisher, Bessie Elkshoulder, Nellie Robinson, Raymond Harris, Sr., Delores Walters Murdock and Elva L. Littlechief Williamson, both as individuals and as representative parties of and on behalf of all the allottees who received allotments pursuant to said Act of June 3, 1926 (44 Stat. 690), as amended, their heirs and devisees; that said above named

defendants, as individual defendants of this action, and, as representatives on behalf of said class, which consists of said allottees, their heirs and devisees, are similarly situated in that said defendants named herein are all allottees and heirs or devisees of allottees who received allotments pursuant to said Act of June 3, 1926, as amended; that (1) the allottees who received allotments pursuant to said Act, as amended, their heirs and devisees, amount in number to approximately One Thousand Four Hundred Eighty-nine (1,489) persons, and said persons are located at and reside in, various places throughout the United States, and therefore are so numerous as to make it impracticable to bring them all before the Court; that likewise, said Act of July 24, 1968 (Appendix "A") specifically authorizes the commencement of this action by the plaintiff against said persons as a class action; (2) there are questions of law or fact present in this action which are common to said entire class, which consist of a determination and decision in this action of whether said allottees, their heirs or devisees, received a vested property right in said minerals which is protected by the fifth amendment; (3) the defenses and claims of said named defendants are typical of the defenses and claims of said class; (4) said defendants hereinnamed as representative parties on behalf of said class will fairly and adequately protect the interests of said class; in addition thereto (b)(1)(a) the prosecution of separate actions against the individual members of said class would create a risk of inconsistent or varying adjudications which [*sic*] respect to individual members of said class which would establish incompatible standards of conduct for the plaintiff, and (b)(1)(B) adjudications which [*sic*] respect to individual members of the class would, as a practicable matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interest; and (b)(2) the plaintiff is hereby acting on the grounds generally applicable to said class thereby making appropriate final declaratory relief with respect to said class as a whole; and (b)(3) the questions of law or fact common to the members of said class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy herein alleged and set forth.

IV.

Section 2 of said Public Law herein referred to (Appendix "A") confirms the right of the plaintiff to bring an action in this Court against the allottees who received allotments pursuant to the Act of June 3, 1926 (44 Stat. 690) as amended, their heirs or devisees, either individually or as a class to determine whether under the provisions of said Act of June 3, 1926, as amended, the allottees, their heirs or devisees, have received a vested property right in the minerals which is protected by the fifth amendment. The plaintiff herein alleges that said allottees, their heirs or devisees did not by said Act or otherwise receive, and do not now have, a vested property right in the coal or other minerals, including oil, gas and other natural deposits of said allotted lands on the said reservation which is protected by the fifth amendment.

WHEREFORE, plaintiff demands judgment:

1. That it be adjudged and decreed by the above-en-

titled Court that said allottees who received allotments pursuant to said Act of June 3, 1926, as amended, their heirs or devisees, did not receive a vested property right in the coal or other minerals, including oil, gas and other natural deposits of said Northern Cheyenne Indian Reservation which is protected by the fifth amendment to the Constitution of the United States;

2. That said coal or other minerals, including oil, gas and other natural deposits on said reservations, are reserved in perpetuity for the benefit of the Northern Cheyenne Tribe.

3. That the plaintiff have such other and further relief as may be just and proper, together with costs and disbursements of this action.

DATED this 8th day of September, A.D. 1970.

BERT W. KRONMILLER and
CLARENCE T. BELUE,
Kronmiller Building,
Hardin, Montana, 59034

By /s/ BERT W. KRONMILLER
Attorneys for Plaintiff

APPENDIX "A"
[to Amended Complaint]

Public Law 90-424
90th Congress, H.R. 5704
July 24, 1968

AN ACT

To grant minerals, including oil, gas, and other natural deposits, on certain lands in the Northern Cheyenne Indian Reservation, Montana, to certain Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Act of June 3, 1926 (44 Stat. 690), as amended by the Act of July 24, 1947 (61 Stat. 418), and the Act of September 22, 1961 (75 Stat. 586), is hereby amended to read as follows:

"Sec. 3. (a) The coal or other minerals, including oil, gas, and other natural deposits, on said reservation are hereby reserved in perpetuity for the benefit of the tribe and may be leased with the consent of the Indian council for mining purposes in accordance with the provisions of the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a-f), under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

"(b) The unallotted lands of said tribe of Indians shall be held in common, subject to the control and management thereof as Congress may deem expedient for the benefit of said Indians."

Sec. 2. The Northern Cheyenne Tribe is authorized to commence in the United States District Court for the Dis-

trict of Montana an action against the allottees who received allotments pursuant to the Act of June 3, 1926, as amended, their heirs or devisees, either individually or as a class, to determine whether under the provisions of the Act of June 3, 1926, as amended, the allottees, their heirs or devisees, have received a vested property right in the minerals which is protected by the fifth amendment. The United States District Court for the District of Montana shall have jurisdiction to hear and determine the action and an appeal from its judgment may be taken as provided by law. If the court determines that the allottees, their heirs or devisees, have a vested interest in the minerals which is protected by the fifth amendment, or if the tribe does not commence an action as here authorized within two years from the date of this Act, the first section of this Act shall cease to have any force or effect, and the provisions of section 3 of the Act of June 3, 1926, as amended by the Acts of July 24, 1947, and September 21, 1961, shall thereupon be carried out as fully as if section 3 had not been amended by this Act.

Approved July 24, 1968.

DISTRICT COURT—ANSWER, COUNTER-CLAIMS AND CROSS-CLAIMS OF TRIBAL DEFENDANTS

Filed Feb. 9, 1972

[Caption Omitted in Printing]

Comes now all of the above named tribal defendants, individually and as representatives of all allottees, their heirs or devisees who received allotments pursuant to the Act of Congress of June 3rd, 1926, as amended, and answers, counter-claims and cross-claims as follows:

FIRST DEFENSE

The amended complaint fails to state a claim against the defendants upon which relief can be granted.

SECOND DEFENSE

1. The Court lacks jurisdiction because the alleged claim as it appears on the face of the amended complaint does not arise under the Constitution, laws, or treaties of the United States as is alleged therein, and therefore the Court lacks jurisdiction of the subject matter.

2. The Court lacks jurisdiction because neither the original summons and complaint nor the amended summons and complaint have been served personally upon all of the individual Cheyenne Indian defendants, and that therefore pursuant to F.R.C.P. 23, there has been insufficient service of process and insufficient and improper notice to the defendants and the Court lacks in personam jurisdiction of defendants.

3. The Court lacks jurisdiction as there is no class or classes in existence within the meaning of F.R.C.P. 23, where the several classes [*sic*] interests in the subject matter are antagonistic to one another.

4. The Court lacks jurisdiction because pursuant to F.R.C.P. 23(a) there has been no showing that the named defendants will fairly and adequately protect the interests of the alleged class.

THIRD DEFENSE

The amended complaint fails to show the existence of an actual controversy between the parties of the nature required by Article III of the United States Constitution and Section 2201 of the Judicial Code, U.S.C. Title 28.

FOURTH DEFENSE

I.

Admit the first allegation stated in paragraph one of the plaintiff's amended complaint only to the extent set forth in the first counter-claim and the first cross-claim as hereinafter set forth, and deny each and every other allegation contained in paragraph one thereof.

II.

Admit each and every allegation contained in paragraph two of the plaintiff's amended complaint.

III.

Deny each and every allegation contained in paragraph three of the plaintiff's amended complaint.

IV.

Deny each and every allegation contained in paragraph four of the plaintiff's amended complaint, and further deny that the plaintiff is entitled to any relief prayed for in its amended complaint or to any other legal or equitable relief or remedy whatsoever.

FIFTH DEFENSE

The special statute Public Law 90-424 of July 24th, 1968, (32 Stat. 424, 425) and any and all other amendments to the Northern Cheyenne Allotment Act of June 3, 1926 (44 Stat. 690) as set out in the plaintiff's amended complaint upon which plaintiff relies, are illegal, null, void and contrary to public policy and also violates [*sic*] Amendment V of the United States Constitution and Article III, Section 27 of the Montana Constitution.

WHEREOF, defendants pray for judgment as hereinafter set forth.

FIRST COUNTER-CLAIM

I.

This counter-claim is brought pursuant to special statute Public Law 90-424 of July 24th, 1968 (32 Stat. 424, 425), which the plaintiff alleges in its amended complaint gives rise to its authority to bring this action in the first instance, in this Court, and upon which said special Act whether valid or not, the defendants now allege carries with it then, the implied permission, right and grant of authority to the defendants to counter-claim as a class against the plaintiff tribe pursuant to F.R.C.P. 23, in the same jurisdictional Court.

II.

Jurisdiction is further conferred upon this Court pursuant to 28 U.S.C. p. [*sic*] 1353 for the purpose of this counter-claim against the plaintiff, or any other counter-claims hereinafter enumerated against the plaintiff.

III.

The plaintiff owes the defendants all monies had and received by it from the United States of America, or had and received by it from any permittee, pursuant to the sales of all prospecting permits, whether or not containing options to lease the mineral rights pertaining to the allotted lands, to be paid by plaintiff to defendants.

WHEREFORE, defendants pray judgment as hereinafter set forth.

FIRST CROSS-CLAIM

I.

This cross-claim is brought pursuant to special statute Public Law 90-424 of July 24th, 1968 (32 Stat. 424, 425),

which the plaintiff alleges in its amended complaint gives rise to its authority to bring this action in the first instance in this Court, and upon which said special Act, whether valid or not, the defendants now allege carries with it then, the implied permission, right and grant of authority to the defendants to cross-claim as a class against the United States of America, as their fiduciary trustee and title holder of their individual allotments, pursuant to F.R.C.P. 23, in the same jurisdictional Court.

II.

Jurisdiction is further conferred upon this Court pursuant to 25 U.S.C., Section 345, for the purpose of this cross-claim against the United States of America or any other cross-claims hereinafter enumerated against the United States of America.

III.

This cross-claim is in the nature of a declaratory judgment action pursuant to 28 U.S.C. p. [*sic*] 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears, and to quiet title to the minerals in and under the defendants [*sic*] allotments, as are all other cross-claims hereinafter numerated [*sic*] against the United States of America.

IV.

Pursuant to the Act of June 2, 1924, (Chapter 233, 43 Statute [*sic*] at large 253) defendants were then, and are now, citizens of these United States of America, and were then, and are now, vested with and entitled to all the rights, privileges, benefits, guarantees and protection of the United States Constitution.

V.

Defendants took and received their respective allotments pursuant to the Act of June 3, 1926, (44 Statute [*sic*] 690) in good faith, and in reliance thereon, and defendants did enter into, and take possession of, and occupy their respective allotments ever since, which were then, and are now unique interests and unique pracels of land.

VI.

Defendants received a vested property right in the coal or other minerals, including oil, gas and other natural deposits, in and under the lands allotted to them pursuant to the Act of June 3, 1926 (44 Stat. 690) which was then, and which is now protected by the Fifth Amendment to the United States Constitution.

VII.

The original Northern Cheyenne Tribe was not a Federal corporation at the time of the enactment of 44 Statute [*sic*] 690, but was in fact a recognized natural band or tribe of North American aborigines, which said band or tribe was not chartered as a Federal corporation until the Act of June 18, 1934, (48 Stat. 984) as amended by the Act of June 15, 1935 (40 Stat. 378) and that they then became a recognized Indian Tribe organized under a constitution and By-Laws ratified by the tribe on November 2, 1935, and approved by the Secretary of the Interior of the United States on November 23, 1935, and amended by ratification by the tribe on April 12, 1960, and approved by the Secretary of the Interior of the United States on July 8, 1960, all pursuant to said Act, and therefore the Federal corporation was then, and is now, a separate and distinct legal entity from its members, and the Act of June 3, 1926 (44

Stat. 690) Section 3, reserving the minerals for the benefit of the tribe for a period of fifty years, referred to the natural band or tribe of North American Aboriginies, as they existed at that time, which band was comprised of the individual allottees, their heirs or devisees and did not refer to the plaintiff federal corporation.

VIII.

Defendants rights in their allotments, and in the minerals in and under their allotments, arose first in time and were then and are now protected by the United States Constitution Amendment V, and therefore pursuant to 44 Stat. 690, Sections 3 and 4 thereof, all income from defendants [*sic*] allotments, including all monies received from the sale of all prospecting permits, whether containing options to lease or not, and all monies from leases, rents, royalties, or other profits should have been placed in the Treasury of the United States, pending the final termination of this litigation, and instead and in fact, the income received from these allotted lands was disbursed to the plaintiff tribe by the United States of America, in violation of law, and in breach of duties owed the defendants by the United States of America.

IX.

The United States of America by the enactment of the 1968 amendment itself (32 Stat. 424) and any other amendment, attempted to do indirectly that which it is prohibited by law from doing directly without just compensation to the defendants, and it did place upon the federal tribe corporation, under color of title to the minerals, the onus of prosecuting this civil suit against the defendants, and the fiduciary trustee did thereby thrust,

compel and otherwise instigate and authorize by this act, one cestui que beneficiary to sue the other cestui que beneficiary, in violation of its trustee responsibilities and duties and in violation of the United States Constitution Amendment V.

X.

The United States of America did by and through its appropriate political subdivisions, departments, bureaus, officers, agents, servants and employees offer and conduct the sales of certain prospecting permits on various dates, after the plaintiff had commenced this lawsuit, and in conducting said sales, the fiduciary trustee to the allotted lands did make the printed material representation to the prospective bidders that "Title to the sub-surface is vested in the Northern Cheyenne Tribe" (See page 1 of the Notice of Competitive Sale No 3 on file as part of plaintiff's Exhibit "A" which is made a part of hereof by reference herein as if fully set forth herein) and which said representation was then and there false, and which the trustee knew, or should have known, was then and there false, and that therefore the said trustee did intentionally, maliciously, or negligently and carelessly, authorize, condone, control, participate and conduct the sales of said prospecting permits in and for the plaintiff tribal corporation, thereby foursquare placing itself on the side of plaintiff, in violation of its trust responsibilities to defendants and all to the further detriment and damages to defendants.

XI.

Therefore, because of the illegal taking of defendants property without due process of law, equal protection, or just compensation, and because of the other wrongful, un-

conscionable and reprehensible behavior and conduct of the United States of America while acting as trustee of defendants' allotments, the defendants have been [*sic*], are being [*sic*], and will continue to suffer irreparable harm, injury and damages in the future, to the extent of all monies paid, or to be paid the plaintiff from the sales of prospecting permits, leases, or for any minerals extracted to date, or to be extracted in the future and for any other income from rents, royalties or other profits accruing from the defendants' allotments paid to plaintiff by the United States of America, and defendants have been [*sic*], are being [*sic*] and will continue to suffer irreparable harm, injury and damage in the future in that the use and occupancy of their respective allotments are limited, if usable or occupiable at all, and that the contamination and pollution caused, or to be caused, in the future, to the defendants [*sic*] waters, lakes, streams and rivers in or under or surounding their allotted lands, and the contamination and pollution caused to the envionment [*sic*] and air above and surrounding the allotments, and the defendants have been, are being, and will continue to suffer irreparable harm, injury and damage in the future in the use and occupancy of their allotments by the destruction and ruination of their hunting, fishing, camping, natural resources and scenery, and the destruction of natural landmarks, historical and religious shrines, and vision quest sites and further damaged by the desecration and ravishment of their sacred mother earth.

WHEREFORE, defendants pray for judgment as hereinafter set forth.

SECOND COUNTER-CLAIM AND CROSS CLAIM

I.

Defendants incorporates [*sic*] herein by reference all of the allegations of all paragraphs of the first counter-claim and first cross-claim as if fully set forth herein.

II.

Defendants are the real, true and beneficial owners of certain allotted lands in the Counties of Big Horn and Rosebud, in the State of Montana, more particularly described and set forth in great detail by plaintiff's exhibits "A" and "B" which are hereby made a part of hereof by reference as if fully set forth herein, and which said allotted lands were received pursuant to the Act of June 3rd, 1926, 44 Statute 690, which included a vested property right in the minerals.

III.

The plaintiff tribe and the United States of America, as title holder to defendants' allotments, did by their officers, agents, or servants, act in concert, collusion and in participation with each other, and did enter into and upon defendants' allotments on numerous and sundry occasion, or did cause, license and permit other certain third party permittees, their agents, servants or employees, to enter into and upon said allotments during the months prior to and subsequent to the filing of this lawsuit, which defendants to their best knowledge and belief [*sic*] occurred during the years 1970, 1971 and 1972, all without the knowledge and consent of defendants, and the afore-described trespassers did dig, drill, core and excavate earth and minerals and destroyed timber and shrubs and otherwise muti-

lated and desecrated the allotted lands and the subsurface, and did further take, remove and convert to their own use, samples and other large quantities of ore and minerals therefrom, and did otherwise commit waste thereon, all to the damage of the defendants and shall continue to so do in the future.

WHEREFORE, defendants pray judgment as hereinafter set forth.

THIRD CROSS-CLAIM

I.

Jurisdiction is conferred on this Court pursuant to the Federal Tort Claims Act, 28 U.S.C. 1346 (b), 1402 and 2675, et sq. [*sic*], as hereinbefore and hereinafter more fully appears.

II.

Defendants incorporate herein by reference all of the allegations of all paragraphs of the First and Second Cross-Claims against the United States of America as if fully set forth herein.

III.

The plaintiff is a citizen of the State of Montana, and the defendants are United States citizens residing in various and diverse states and foreign countries, and the matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), Exclusive of interests and costs in respect to each of the defendants.

WHEREFORE, defendants pray judgment for money damages as hereinafter set forth.

FOURTH CROSS-CLAIM

I.

Jurisdiction is conferred on this Court pursuant to the Tucker Act, 28 U.S.C. P. [*sic*] 1346 (a) (2) as hereinbefore and hereinafter more fully appears and is brought to recover compensation for certain allotted lands of defendants in the counties of Big Horn and Rosebud, State of Montana, appropriated directly or indirectly for the public use, and damages to the residue of the tract, as hereinbefore and hereinafter more fully appears, and for the purposes of this cross-claim only defendants claims for damages does [*sic*] not exceed Ten Thousand Dollars ($10,000.00) per defendant, and said cross-claim is founded upon the Fifth Amendment to the Constitution of the United States.

II.

Defendants incorporate herein by reference all of the allegations of all paragraphs of the First and Second Cross-claims against the United States of America, as if fully set out herein.

III.

There has been a wrongful and illegal taking of valuable mineral interests in and under the defendants allotted lands, both directly and indirectly by the United States of America, its officers, agents, servants, employees or other representatives and said taking was without the knowledge, consent, or permission of the defendants and was a tortious breach of the duties owed by the trustee under an express or implied contract with each cestui que allottee, heir or devisee.

WHEREFORE, defendants prays and demand that this Court adjudge:

1. That the defendants have a vested property right in the minerals, including oil and gas and other natural deposits in and under their allotted lands since the enactment of the Act of Congress, of June 3, 1926, (44 Stat. 690) which is protected by the Fifth Amendment to the United States Constitution;

2. That the amendment of July 24, 1968, (32 Stat. 424, 425) is illegal, null, void, and of no force and effect whatsoever, and plaintiff's complaint be dismissed with costs of this suit, and attorneys fees assessed against it;

3. That the plaintiff tribe pay over all monies held by it from the sales of prospecting permits, or leases, or any income pertaining to the minerals in the allotted lands, plus interest thereon, to the defendants, and that the plaintiff be permanently enjoined and restrained from receiving any income from the allotted lands in the future;

4. That the United States pay over all monies still held by it from the sales of all prospecting permits or leases or other income to the defendants pertaining to defendants allotted lands, plus interest thereon;

5. That the plaintiff tribe and the United States, their officers, agents, servants, employees or other representatives, including independent contractors, licensees, or permittees, be permanently enjoined and restrained from entering in and upon the defendants [*sic*] allotted lands for any purpose whatsoever, without defendants [*sic*] permission:

6. That the defendants be awarded judgment for penal special and general damages against the United States of

America and the plaintiff tribe in such amounts as this Court shall determine;

7. That the defendants be awarded judgment for special and general damages against the United States of America pursuant to the Federal Tort Claims Act, in such amounts as the Court shall determine;

8. That the defendants be awarded judgment for special and general damages not exceeding Ten Thousand Dollars ($10,000) per allottee, heir or devisee against the United States of America, pursuant to the Tucker Act;

9. That the defendants recover all costs and expenses incurred by reason of this lawsuit, including court costs and attorney fees, and for such other and further relief as to the Court may seem just and proper.

LEWIS E. BRUEGGEMANN and
MARION B. PORTER

By /s/ LEWIS E. BRUGGEMANN

Lewis E. Brueggemann
456-8 Hart-Albin Building
Billings, Montana 59101
Attorneys for Defendants

[Certificate of Service Omitted in Printing]

DISTRICT COURT—ANSWER OF DEFENDANTS WILLIAMSON AND BOWEN

Filed Feb. 10, 1972
[Caption Omitted in Printing]

Comes now defendants Elva Littlechief Williamson and James Bowen and plead as follows:

I.

Defendants deny the allegations of Paragraph I of the Plaintiff's Amended Complaint to the extent that this court has jurisdiction to hear the above-entitled matter and for their objections, defendants continue to rely on their motions and memoranda previously submitted.

II.

Defendants admit the allegation set forth in Paragraph II of the Plaintiff's Amended Complaint.

III.

1. Defendants deny all the allegations in Paragraph III of the Plaintiff's Amended Complaint that refer to the existence of a proper class under Rule 23 (a) and (b), F.R.C.P., as amended, and for their objections, defendants continue to rely on their motions and memoranda previously submitted.

2. Defendants further state that they have no knowledge of the number of persons who are alleged to be the allottees, their heirs or devisees pursuant to the Act of June 3, 1926.

IV.

1. Defendants deny all parts of Paragraph IV of the Plaintiff's Amended Complaint that refer to the existence of

a proper class action or to the jurisdiction of this court to hear the above-entitled matter and for their objections, defendants rely on their motions and memoranda previously submitted.

2. Defendants further deny the allegations of Paragraph IV of the Plaintiff's Amended Complaint that alleges that allottees, their heirs or devisees did not receive or do not now have, by virtue of the Act of June 3, 1926, a vested property right in the coal or other minerals including gas and other natural deposits beneath their allotments, that is protected by the Fifth Amendment.

V.

As a first defense, defendants allege that the Amended Complaint fails to state a claim upon which relief can be granted.

VI.

As a second defense to the above action, defendants claim that the United States is an indispensable party to this action and should be joined as such under Rule 19, F.R.C.P., and for their reasons, defendants will rely on motions and memoranda previously submitted.

VII.

As a third defense to the above action, defendants claim that the Act of July 24, 1968, Public Law 90-424 is unconstitutional in that Congress was without authority to enact said legislation.

WHEREFORE, defendants Elva Littlechief Williamson and James Bowen demand judgment dismissing the above-entitled action.

DATED this 10th day of February, 1972.

By: /s/ THOMAS J. LYNAUGH
THOMAS J. LYNAUGH
BARNEY REAGAN
WILLIAM N. JENSEN
Attorneys for Defendants
Elva L. Williamson and
James Bowen

[Certificate of Service Omitted in Printing]

DISTRICT COURT—ANSWER OF DEFENDANT LITTLEBIRD

Filed Feb. 10, 1972
[Caption Omitted in Printing]

COMES NOW defendant, Marvin L. Littlebird, and respectfully answers amended complaint of the plaintiff as follows:

I.

Admits the allegations of paragraph I, II, III and the first sentence of paragraph IV and denies the balance of paragraph IV and the Prayer of the Complaint.

II.

DEFENDANT MARVIN L. LITTLEBIRD'S FIRST DEFENSE

Defendant Marvin L. Littlebird alleges that he and others received a vested property right in the coal or other minerals, including oil, gas and other natural deposits of the allotted lands on the reservation herein refered [*sic*] to and that such property right is protected by the Fifth Amendment to the United States Constitution and therefor [*sic*] the Act refered [*sic*] to in plaintiff's complaint as Appendix "A" is wholly ineffectual as to this defendant.

Wherefore, defendant Marvin L. Littlebird demands judgment against plaintiff as follows:

1. That the relief demanded by plaintiff be denied.
2. That it be adjudged and decreed that Marvin L. Littlebird has a vested property right in the coal or other minerals, including oil, gas and other natural deposits of the said Northern Cheyenne Indian Reservation.
3. That defendant have such and further relief as may be just and proper together with any costs and disbursement expended by this action.

/s/ OTIS L. PACKWOOD
OTIS L. PACKWOOD
United States Attorney for the
District of Montana
Attorney for the Defendant,
Marvin L. Littlebird

[Certificate of Service Omitted in Printing]

DISTRICT COURT — PLAINTIFF'S REPLY TO TRIBAL DEFENDANTS' COUNTER-CLAIMS

Filed Mar. 1, 1972
[Caption Omitted in Printing]

COMES NOW the Plaintiff and for its reply to the tribal defendants' counter-claim admits, denies and alleges as follows:

AS TO FIRST COUNTER-CLAIM

FIRST DEFENSE

I.

The said tribal defendants' first counter-claim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

I.

The Court lacks jurisdiction over the subject matter.

THIRD DEFENSE

I.

The Plaintiffs deny each and every allegation contained in paragraphs I, II, and III of the tribal defendants' first counter-claim.

AS TO WHAT IS DESIGNATED AS SECOND COUNTER-CLAIM AND CROSS CLAIM

FIRST DEFENSE

I.

What is designated by tribal defendants as Second Counter-Claim and Cross Claim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

I.

The Court lacks jurisdiction over the subject matter.

THIRD DEFENSE

I.

Deny each and every allegation contained in paragraphs I, II, III, IV, V and VI.

II.

Admit that the Northern Cheyenne tribe is a corporation organized under the act of June 18, 1934, the Wheeler-Howard Act, as alleged in paragraph VI; deny each and every other allegation contained in paragraph VI.

III.

Deny each and every allegation contained in paragraph VIII, IX, X, XI and paragraph II and III of tribal defendants' second counter-claim and cross claim.

WHEREFORE, having fully replied to the tribal defendants' first counter-claim and what is designated as second counter-claim and cross claim, the Plaintiff prays that the said claims be dismissed.

LONGAN & HOLMSTROM
Suite 319 Securities Building
Billings, Montana

BERT W. KRONMILLER
Kronmiller Building
Hardin, Montana
Attorneys for Plaintiff

By /s/ ROBERT HOLSTROM

[Certificate of Service Omitted in Printing]

DISTRICT COURT — AMENDED ANSWER AND COUNTER-CLAIM OF DEFENDANTS WILLIAMSON AND BOWEN

Filed Mar. 2, 1972
[Caption Omitted in Printing]

Comes now the defendants, Elva Littlechief Williamson and James Bowen, to amend their Answer as follows:

By adding the following paragraph entitled Counter-claim to said Answer after paragraph VII thereof.

Counter-claim

1. This claim is brought pursuant to the jurisdiction conferred by the Act of July 24, 1968, Public Law 90-424 but by so doing, defendants do not intend to waive any objections heretofore set out regarding the jurisdiction of this court to hear the above-entitled matter.

2. Defendants, by virtue of a vested property right in the coal or other minerals, including gas and other natural deposits beneath their allotments, claim all right, title

and interest in the proceeds received by the plaintiff from the sale of prospecting permits on April 22, 1971, and in all other monies received by the plaintiff since that date as a result of the sale of further prospecting permits or from the negotiation of mineral leases on said allotments.

WHEREFORE, defendants pray that this court grant the relief requested by the Counter-claim.

By: /s/ THOMAS J. LYNAUGH
THOMAS J. LYNAUGH
BARNEY REAGAN
WILLIAM N. JENSEN
Attorneys for Defendants
ELVA L. WILLIAMSON and
JAMES BOWEN

[Certificate of Service Omitted in Printing]

DISTRICT COURT–PLAINTIFF'S REPLY TO DEFENDANTS WILLIAMSON AND BOWEN'S COUNTER-CLAIM

Filed Mar. 17, 1972
[Caption Omitted in Printing]

COMES NOW the plaintiff and for its reply to the counter-claim of the defendants Elva L. Littlechief Williamson and James Bowen, admits, denies and alleges as follows:

FIRST DEFENSE

The counter-claim of the said defendants fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter.

THIRD DEFENSE

Plaintiffs deny each and every allegation contained in paragraphs 1 and 2 of the said defendants' counterclaim.

WHEREFORE, having fully replied to the counterclaim of the defendants Elva L. Littlechief Williamson and James Bowen, the plaintiff prays that the said claim be dismissed.

LONGAN & HOLMSTROM
Suite 319 Securities Building
Billings, Montana

BERT W. KRONMILLER
Kronmiller Building
Hardin, Montana
Attorneys for Plaintiff

By /s/ ROBERT HOLMSTROM

[Certificate of Service Omitted in Printing]

DISTRICT COURT–ORDER AND MEMORANDUM OPINION DENYING TRIAL DEFENDANTS' MOTION TO ADD UNITED STATES AS CROSS-DEFENDANT

Filed May 30, 1972

[Caption Omitted in Printing]

This case is now before the court on the motion of the tribal defendants represented by Messrs. Brueggemann and

Porter[1] to make the United States of America a party defendant on the cross-claims alleged in their answer, counterclaims, and cross-claims, pursuant to Rules 13(h), 19 and 20 of the Federal Rules of Civil Procedure, and the objection thereto of the United States.

Rule 13(h), as amended in 1966, provides that, "Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20."[2] The joinder of an additional defendant under Rule 13(h) is discretionary rather than compulsory.[3]

In determining whether the United States should now be added as a cross-defendant for the purpose of permitting the defendants to assert their cross-claims, it is necessary to review briefly the history of this litigation.

On July 2, 1970 (almost two years ago) the plaintiff filed a class action pursuant to Public Law 90-424 (82 Stat. 424) to determine whether allottees who receive allotments under the Act of June 3, 1926, as amended, their heirs or devisees, "have a vested property right interest in the min-

1. The tribal defendants represented by Messrs. Brueggemann and Porter have filed a motion, with supporting brief, and an answer asserting a counterclaim, three cross-claims, and one counterclaim and cross-claim. In an amended answer the nontribal defendants have asserted a counterclaim. The defendant Marvin L. Littlebird, a tribal defendant represented by the United States Attorney, has filed an answer.

2. Rule 19 relates to "Joinder of Persons Needed for Just Adjudication" and Rule 20 to "Permissive Joinder of Parties."

3. Under the 1966 Amendment the words "the court shall order" were "replaced by the more flexible standard that persons 'may be made parties', which clearly gives the court discretion to decide whether or not to add a party." 6 Wright & Miller, Federal Practice and Procedure § 1434, p. 186. This is apparently recognized by defendants. They state in their brief that, "Cross-claims (presumably those against additional parties) are not compulsory but permissable."

erals which is protected by the Fifth Amendment."[4] Responsive pleadings have now been filed, and the case is at issue with respect to the present parties.

In order and memorandum opinion entered September 30, 1971 the court ruled that:

(1) The United States is not an indispensable party defendant, as the nontribal defendants contend;

(2) The United States should not be joined as an involuntary plaintiff, as contended by the tribal defendants represented by Messrs. Brueggemann and Porter;

(3) This is a proper class action; and

(4) The court has jurisdiction.

In addition the court decided several motions and petitions for temporary restraining orders and preliminary injunctions seeking to enjoin plaintiff from receiving or exercising any control over the proceeds of the sale of prospecting permits pending the outcome of the litigation.

In an order entered January 12, 1972 the court held that:

(1) The representative defendants and their counsel will fairly and adequately represent the interests of the entire class, including both members and nonmembers of the tribe; and

(2) The notice given to the defendants was adequate for the protection of all members of the class and the fair

4. Public Law 90-424, approved July 24, 1968 amended section 3 of the Act of June 3, 1926 (44 Stat. 690), as amended by the Acts of July 24, 1947 (61 Stat. 418), and September 22, 1961 (75 Stat. 586), to reserve in perpetuity the minerals underlying the Northern Cheyenne Reservation for the benefit of the Tribe. Under prior acts the minerals would become the property of the allottees, their heirs and devisees, in 1976.

conduct of the action and meets the requirements of due process.

In addition, the court denied the motion of the defendants Williamson and Bowen to amend the September 30, 1971 order to permit them to take an interlocutory appeal on the issues of whether the United States is an indispensable party and whether the federal court has jurisdiction. As stated in the January 12, 1972 opinion, the case is not complicated. Aside from the cross-claims it involves a single legal issue.

Through their cross-claims defendants seek a judgment (1) declaring that the defendant allottees, their heirs and devisees, have a vested property right in the minerals which is protected by the Fifth Amendment to the Constitution of the United States,[5] that they are entitled to all monies heretofore collected from the sales of prospecting permits, leases and other income, and that Public Law 90-424 is null and void; and (2) that the plaintiff Tribe pay over all monies it has received and the United States pay over all monies which it holds, and that both be enjoined from entering the allotted lands without defendants' permission. In addition, defendants seek special and general damages under the Federal Tort Claims Act and Tucker Act, together with costs and attorney fees.

As noted supra, the question of whether a defendant should be added under Rule 13(h) is discretionary with the court. Likewise, under Rule 23(d) the court is given a broad discretionary power over the conduct and manage-

5. Defendants contend, inter alia, that Section 3 of the Act of June 3, 1926 "referred *not to* the plaintiff in this action but to the recognized Natural Band or tribe of North American aborigines collectively who are, after all, the *defendants in this action*."

ment of class actions. In concluding that the present motion should be denied the court has considered the following factors:

(1) From the outset of this litigation the court and counsel for all parties have recognized that there must be adequate representation of the class, as well as each subclass, by qualified counsel. The delay in the preliminary stages was due in large part to resolving questions relating to the adequacy of the representation of all persons, both members and nonmembers of the Northern Cheyenne Tribe, who would be affected by the judgment in this case. Initially it was uncertain also whether the United States would represent any of the defendants.

An appearance was entered on November 17, 1971 by the United States Attorney on behalf of Marvin L. Littlebird, a member of the plaintiff tribe, upon this defendant's specific request. This representation was considered by the court in determining in the January 12, 1972 order that all members of the class, and each subclass, are adequately represented.

Obviously it would be impossible for the United States Attorney to represent the United States on the cross-claims and continue his representation of the defendant Littlebird. To allow joinder of the United States would create a conflict of interest[6] and possibly destroy the adequacy of representation of the defendant class.

(2) The complaint, in an action expressly authorized by Congress, raises a single legal question, i.e., whether

6. See Rincon Band of Mission Indians, etc. v. Escondido Mutual Water Company, et al, 9 Cir. No. 26124, decided April 19, 1972, and cases there cited.

the defendants have a vested property right in the minerals under the Act of June 3, 1926, as amended, under which the mineral [*sic*] would become the property of the allottees, their heirs and devisees, in 1976. The cross-claims raise a second legal issue, i.e., whether the defendants have a vested property right in the minerals prior to 1976. Both legal issues may be determined in the present action without adding the United States as a party.

If the defendants should prevail on the second issue, either in this court or the appellate courts, further litigation will of course be required to resolve questions involving funds heretofore collected and paid to the plaintiff Tribe or held by the United States. The court sees no reason for attempting to resolve these questions at this time. It does not appear that a determination of the two legal issues will involve any factual dispute. The parties should be able to agree upon a pretrial order containing stipulated facts and a statement of the legal issues presented, with a provision that none of the parties waive any of the defenses heretofore asserted in pretrial motions.

IT IS ORDERED:

(1) The motion to make the United States a party defendant to the cross-claims is denied;

(2) The parties will attempt to agree upon a pretrial order prior to further hearing on Friday, June 2, 1972, at 1:30 P.M.

Done and dated this 30th day of May, 1972.

/s/ W. J. JAMESON
United States District Judge

DISTRICT COURT—PRE-TRIAL ORDER

Filed July 10, 1972

[Caption Omitted in Printing]

1. It is stipulated between the parties hereto that the execution of this pre-trial order will not constitute a waiver of any of the defenses heretofore asserted in pre-trial motions nor a waiver by the plaintiff of its right to contest the jurisdiction of the Court over the counter claims of the defendants.

2. *AGREED FACTS* The following facts are true and require no proof:

The Northern Cheyenne Tribe of Indians was a recognized natural band of North American aborigines and by executive order dated November 26, 1884 President Chester A. Arthur created a reservation for said tribe or band of Indians, a copy of said executive order is attached hereto labeled Exhibit "A".

The boundaries of the reservation set aside for the Northern Cheyenne Tribe were enlarged by executive order of President William McKinley dated March 19, 1900, a copy of said executive order being attached hereto labeled Exhibit "B".

That the members of the defendant class and the individually-named defendants received their allotments pursuant to the act of June 3, 1926 (44 Stat. 690).

That the Northern Cheyenne Tribe elected to obtain a charter under the act of June 18, 1934 (48 Stat. 984) as amended by the act of June 15, 1935 (49 Stat. 378) and is a recognized Indian tribe organized under a constitution

and by-laws ratified by the tribe on November 2, 1935 and approved by the Secretary of Interior of the United States on November 23, 1935 and amended by ratification by the Tribe on April 12, 1960 and approved by the Secretary of Interior of the United States on July 8, 1960. That attached hereto labeled Exhibit "C" is a copy of said charter.

That the allotment act of 1926, the act of June 3, 1926 (44 Stat. 690) was amended by the enactment of Public Law 90-424, approved by the President on July 24, 1968 (82 Stat. 824 [*sic*], 425); attached hereto labeled Exhibit "D" is a copy of said Public Law 90-424.

That this action was instituted by the Plaintiff pursuant to Public Law 90-424, on the 2nd day of July, 1970.

That the Plaintiff has in the past entered into oil and gas leases, coal permits and coal leases covering the minerals located in and under the allotments of the class of defendants; that the plaintiff has received sums of money for the execution of said leases, for the delay rentals and advance royalties, the exact sum received by the plaintiff is not presently available to the parties; that the lessees and permittees, pursuant to said leases and permits, have gone upon the lands contained in the leases and permits and have explored for mineral deposits by the way of drilling in search of oil and gas and drilling in search of coal deposits; that said lessees and permittees have, in their drilling operations, disturbed the surface of the ground and have removed certain samples of the soil and of the mineral deposits; that there has been no production of oil and gas or coal from said lands.

3. *CONTENTION OF THE PARTIES*

Plaintiff's contentions:

1. The plaintiff contends that the defendants and their predecessors in interest did not receive a vested property right in the minerals in and under their respective allotments which is protected by the Fifth Amendment to the Constitution of the United States;

2. The Plaintiff further contends that it is entitled to the monies received for execution of leases, delay rental payments and advance royalties from leases and permits executed by it covering the minerals in and under the allotments of the defendant class and that its lessees and permittees have a right to go upon the surface of the allotments of the defendant class and use so much of the surface as is necessary for the exploration of mineral deposits without being guilty of tresspass [*sic*] or subjecting the plaintiff to liability for permitting the said lessees and permittees to go upon the surface of the allotments of the defendant class.

Defendant's contentions:

1. The defendants contend that they and their predecessors in interest received a vested property right in the minerals, including oil and gas and other natural deposits, in and under their allotted lands by the enactment of the act of Congress, June 30, 1926 (44 Stat. 690) which is protected by the Fifth Amendment to the Constitution of the United States.

2. Defendants contend that they are entitled to all monies had and received by plaintiff from the sale of all leases and permits and from delay rental and advance royalty payments pursuant to said leases and permits per-

taining to the minerals in and under the allotments of the defendant class.

3. The defendants contend that they are entitled to damages for damage done to the surface of their allotments by permittees and lessees pursuant to permits and leases entered into by the plaintiff and are entitled to have an injunction enjoining the plaintiff and its permittees and lessees from entering upon the surface of the allotments belonging to the defendant's [*sic*] class for the purpose of exploring for mineral deposits.

4. *LAW PROBLEMS*

The parties agree that the trial of this cause, including the issues raised by the counter-claims of the defendants, would be extremely time consuming and expensive because of the necessity of submitting proof relative to the amount of money received by the plaintiff tribe from leases and permits on each individual allotment and proof relative to the alleged damage sustained by each individual defendant because of the activities of the permittees and lessees of the plaintiff upon each individual allotment.

The parties agree, in order to conserve the time of the Court and of the parties, to submit to the Court for its determination, prior to trial, the following issues:

1. Whether or not the defendants and their predecessors in interest received a vested property right in the minerals in and under their respective allotments which is protected by the Fifth Amendment of the United States Constitution by virtue of the Act of June 3, 1926 (44 Stat. 690) as amended;

2. Whether or not the defendant class is entitled to the

revenues received by the plaintiff by virtue of the execution of leases and permits covering the minerals in and under their respective allotments;

3. Whether or not the plaintiff is liable to the defendants for damages done to the surface of their respective allotments by the permittees and lessees of the plaintiff in exploring for mineral deposits in and under said allotments;

4. Whether or not the defendants are entitled to an injunction to enjoin the plaintiff and its permittees and lessees from going upon their respective allotments for the purpose of exploring for mineral deposits.

The parties further agree that these issues may be submitted to the Court upon the agreed statement of facts, hereinabove set forth, and upon briefs of the respective parties.

DATED this 2nd day of June, 1972.

Lewis E. Brueggemann and Marion B. Porter
456-8 Hart-Albin Building, Billings, Montana
By /s/ LEWIS E. BRUEGGEMANN

Longan & Holmstrom
Suite 319, Securities Bldg., Billings, Montana
By /s/ ROBERT HOLMSTROM

Thomas J. Lynaugh
Big Horn Co. Courthouse, Hardin, Montana
By /s/ THOMAS J. LYNAUGH

Otis L. Packwood, United States Attorney
Federal Building, Billings, Montana

By /s/ OTIS L. PACKWOOD

Bert W. Kronmiller
314 North Custer Avenue, Hardin, Montana

By /s/ BERT W. KRONMILLER

Approved this 10th day of July, 1972.

/s/ W. J. JAMESON
United States District Judge

[Exhibit A to Pre-Trial Order—The Executive Order of November 26, 1884—Omitted in Printing (*see* Petitioner's Brief at A-7-8).]

[Exhibit B to Pre-Trial Order—The Executive Order of March 19, 1900—Omitted in Printing (*see* Petitioner's Brief at A-8-9).]

[Exhibit C to Pre-Trial Order—Corporate Charter of Northern Cheyenne Tribe—Omitted in Printing. (*see* Respondent's Brief at 1c-7c).]

[Exhibit D to Pre-Trial Order—1968 Amendment to Northern Cheyenne Allotment Act—Omitted in Printing (*see* Petitioner's Brief at A-6-7).]

DISTRICT COURT — ORDER DENYING MOTIONS FOR NEW TRIAL OR TO AMEND JUDGMENT*

Filed Nov. 28, 1972

[Caption Omitted in Printing]

Counsel for all of the named defendants have filed motions for a new trial or to amend the judgment. Prior to entry of its order of September 29, 1972, the court con-

*The final Order and Opinion of the District Court is printed in the Petition for Writ of Certiorari at A-12-29; the final Judgment is printed therein at A-36-37.

sidered all of the statutes, treaties, executive orders, and cases cited in support of the motions and ruled against defendants' contentions.

Nothing has been presented to persuade the court to modify its conclusions. On the contrary, the court finds support in the per curiam opinion of the United States Supreme Court in United States v. Jim, No. 71-1509, and Utah v. Jim, No. 71-1612, 41 L.W. 3285, decided November 20, 1972. The Court held that a 1933 statute (47 Stat. 1418) conferring oil and gas royalties on Indians residing on the Aneth extension of the Navajo Reservation "did not create constitutionally protected property rights" in the beneficiaries of the Act and upheld a 1968 Act (82 Stat. 121) enlarging the class of beneficiaries to include the entire Navajo tribe residing in San Juan County, Utah.

Defendants Williamson and Bowen, noting the similarity between the 1933 statutory grant to the residents of the Aneth extension and the 1926 Act upon which the defendants here rely, urged this court to follow the opinion of the Utah District Court (unreported) holding that the 1933 Act vested property rights in the Aneth extension residents and that the 1968 Act was unconstitutional.

The Supreme Court reversed. Following Gritts v. Fisher, 224 U.S. 640 (1912), the Court concluded:

> "Congress has not deprived the Navajo of the benefits of mineral deposits on their tribal lands. It has merely chose to re-allocate the * * * royalties * * * in a more efficient and equitable manner. This was well within the power of Congress to do. As no 'property,' in a Fifth Amendment sense, was conferred upon residents of the Aneth extension by the 1933 Act,

no violation of the Fifth Amendment was effected by the 1968 legislation."

The motions for a new trial or to amend the judgment are denied.

Done and dated this 28th day of November, 1972.

/s/ W. J. JAMESON
United States District Judge

NINTH CIRCUIT COURT OF APPEALS — ORDER RECALLING MANDATE AND GRANTING LEAVE TO FILE UNTIMELY PETITION FOR REHEARING.*

Filed Feb. 28, 1975

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 73-1545

THE NORTHERN CHEYENNE TRIBE,
Plaintiff-Appellee,
v.
NORTHERN CHEYENNE DEFENDANT CLASS OF ALLOTTEES, HEIRS AND DEVISEES,
Defendant-Appellant.

No. 73-1546

THE NORTHERN CHEYENNE TRIBE,
Plaintiff-Appellee,
v.
ELVA L. LITTLECHIEF WILLIAMSON AND JAMES BOWEN,
Defendants-Appellants.

No. 73-1547

THE NORTHERN CHEYENNE TRIBE,
Plaintiff-Appellee,
v.
MYRON L. LITTLEBIRD,
Defendant-Appellant.

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*The Opinion of the Ninth Circuit Court of Appeals is printed in the Petition for Writ of Certiorari at A-1-11; the Judgment is printed therein at A-33-34.

ORDER

Before: WRIGHT and CHOY, Circuit Judges, and PALMIERI,* District Judge.

(1) The mandate heretofore issued herein is recalled.

(2) The late filing of the petition for rehearing of the Northern Cheyenne Tribe is permitted and the petition for rehearing shall be filed within 14 days from the date of filing of this order.

(3) The petition for rehearing may be of a length not to exceed 25 pages of standard typographic printing or 30 pages of printing by any other process.

(4) A response if any to the petition for rehearing shall be filed by the appellees herein within 14 days from the date of filing of the petition for rehearing and may be of the same length as authorized for the petition for rehearing.

TO CLERK OF COURT — February 27, 1975
FROM JUDGE CHOY

RE: No. Cheyenne Tribe v. Littlebird, etc.
Nos. 73-1545/1546/1547

I certify that all judges concerned concur in the attached order. The clerk will please file.

/s/ HERBERT Y. CHOY
United States Circuit Judge

*The Honorable Edmund L. Palmieri, Sr. United States District Judge for the Southern District of New York, sitting by designation.

NINTH CIRCUIT COURT OF APPEALS — ORDER DENYING PETITION FOR REHEARING

Filed April 28, 1975

[Caption Omitted in Printing]

Before: WRIGHT and CHOY, Circuit Judges, and PALMIERI,* District Judge.

The panel as constituted in the above cases has voted to deny the petition for rehearing. The petition for rehearing is denied.

TYPICAL ALLOTMENT PATENT

(Plaintiff's Exhibit No. 4)

THE UNITED STATES OF AMERICA

To all to whom these presents shall come, Greeting:

WHEREAS, a schedule of allotments approved by the Secretary of the Interior has been deposited in the General Land Office, whereby it appears that in accordance with the provisions of the Act of Congress of June 3, 1926 (44 Stat. 690), Julia Whistlingelk Whitedirt, an Indian of the Northern Cheyenne Indian Reservation, has been allotted the following-described land as a Homestead:

[Legal Description Omitted in Printing]

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, has allotted, and by these presents does allot, unto the said Indian the above-described land as a Homestead, subject to all the provisions, conditions, limitations and restrictions contained in said Act of June 3, 1926, and hereby declares that it does and will hold the land so allotted in trust for the sole use and benefit of the said allottee, inalienable and nontaxable

*The Honorable Edmund L. Palmieri, Sr., United States District Judge for the Southern District of New York, sitting by designation.

for the period of twenty-five years from date hereof, or until the death of said allottee, and that at the expiration of said period the United States will convey to said Indian or to her heirs, as the case may be, the fee to said land, discharged of said trust and free of all charges or incumbrances whatsoever. Should said Indian die before the expiration of said twenty-five years, then the Secretary of the Interior shall determine the heirs of said Indian and either issue to them a patent in fee for said land, or cause the same to be sold for their benefit as provided by law. There is reserved from the land hereby allotted a right of way thereon for ditches or canals constructed by the authority of the United States. There is also reserved for the benefit of the Northern Cheyenne Indians, all the coal or other minerals, including oil, gas, and all natural deposits in said land. An area not exceeding sixty feet on either side of every section line within the said reservation, dedicated by said Act as public highways whenever and so far as the same may be so declared by the county commissioners of the county in which the same may be situated, is also reserved.

IN TESTIMONY WHEREOF, I, HERBERT HOOVER, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the twenty-second day of September in the year of our Lord one thousand nine hundred and thirty-two and of the Independence of the United States the one hundred and fifty-seventh.

By the President: /s/ HERBERT HOOVER
By /s/ LEAFIE E. DIETZ, Secretary,
/s/ EMMA L. WARREN,
Recorder of the General Land Office

RECORDED: Patent Number 1058516

THE FOLLOWING ITEMS* ARE FROM APPENDIX A OF THE NORTHERN CHEYENNE TRIBE'S PETITION FOR REHEARING IN THE NINTH CIRCUIT COURT OF APPEALS

Filed Mar. 14, 1975

Denied April 28, 1975

LETTER FROM JEROME RED BIRD TO SENATOR THOMAS J. WALSH OF MONTANA, DATED NOVEMBER 25, 1924

(From Appendix A of Petition for Rehearing in Ninth Circuit)

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN FIELD SERVICE
Tongue River Agency

Lame Deer, Montana,
November 25, 1924.

Hon. T. J. Walsh,
U.S. Senator,
Washington, D. C.

Dear Senator Walsh:

I received your letter of November 10th, and showed it to various Indians of this reservation. We are all glad that you were re-elected. One thing we can not understand is that we do not have our allotment.

I believe this is one of the last reservations that is unallotted, therefore, I have taken this matter up with various people, in fact, we have talked about it for the last four or five years, and we have finally come to the conclusion to ask you to help us.

*These items are from a manuscript identified as "Legislative File of the Cheyenne Indians" contained in the collection entitled "Thomas J. Walsh Papers" collected in the Division of Manuscripts of the Library of Congress and were duly certified by the Library of Congress.

We have in mind a tentative Allotment Bill, but do you not deem it prudent to have the Indian Office order the Superintendent and about three representative men of this reservation [*sic*] come to Washington and present to you orally, just what is needed here, and then their wants inasmuch as relates to allotment, to be written down and enacted into a law.

It is high time that something is done for the Northern Cheyenne Indians. We want to be abreast of times, we want to do what is right, in fact, to quote the last paragraph of your letter.

> "Strive at all times to render unto others equal and exact justice, and improve our condition and make us worthy of the high privilege of citizenship."

Kindly let me hear from you as the Indians know as stated in the opening paragraph of my letter that I am in correspondence with you.

Sincerely,

/s/ JEROME RED BIRD

Jerome Red Bird

LETTER FROM SENATOR THOMAS J. WALSH OF MONTANA TO COMMISSIONER OF INDIAN AFFAIRS CHARLES H. BURKE, DATED DECEMBER 2, 1924

(From Appendix A of Petition for Rehearing in Ninth Circuit)

December 2, 1924.

Honorable Charles H. Burke,
Commissioner of Indian Affairs,
Washington, D. C.

My Dear Mr. Commissioner:

The Cheyenne Reservation is the only one in the State of Montana for the allotment of which provision has not been made by Congress. I assume that it is the purpose of your Office to carry out the policy evidenced by recent legislation which has been effective with reference to other Montana Reservations. I see no reason why any exception should be made in the case of the Cheyenne. I had a conference during the month of October with the Committee comprising most of the leading men of the Tribe, who advised me of their desire and the desire of the Tribesmen generally that the Reservation be allotted. Will you have the kindness to write me of your attitute on this matter, and if I have correctly divined it, to send a copy of a bill for introduction.

With kind regards, I am,

Very truly yours,

[File Copy]

LETTER FROM COMMISSIONER OF INDIAN AFFAIRS CHARLES H. BURKE TO SENATOR THOMAS J. WALSH OF MONTANA, DATED DECEMBER 8, 1924

(From Appendix A of Petition for Rehearing in Ninth Circuit)

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

Refer: 87709-24 December 8, 1924.

My dear Senator:

Receipt is acknowledged of your letter of December 2, 1924, in reference to allotting the land of the Tongue River or Northern Cheyenne Indian Reservation in severalty to the Indians.

That question has been before the Office on several previous occasions and was up for consideration only a few months ago. The Indians themselves appear to be divided in their views, some favoring others opposing allotments in severalty. The reservation is generally rough and ninety-five per cent of the land is unsuitable for agricultural purposes, being of value only when used in connection with livestock and grazing industries. The range can be used to much greater advantage by holding it, at least for the present, as tribal property, for the reason that some of the land is adapted to winter grazing and other parts adapted to summer grazing, consequently if it were cut up into allotments very few of the tracts would have adequate water supply and practically none

of them would have grazing for both winter and summer.

In view of these conditions and taking into consideration the needs of the Indians, the conclusion has been reached that it is not advisable to make allotments in severalty on this reservation within the immediate future.

A copy of this letter is inclosed for your convenience.

Cordially yours,

/s/ CHAS. H. BURKE
Commissioner.

Honorable T. J. Walsh,
United States Senate.

[File Copy]

LETTER FROM SENATOR THOMAS J. WALSH OF MONTANA TO JEROME RED BIRD, DATED DECEMBER 13, 1924

(From Appendix A of Petition for Rehearing in Ninth Circuit)

December 13, 1924

Hon. Jerome Red Bird,
Lame Deer, Montana.

Dear Sir:

I am inclosing herewith a letter from the Commissioner of Indian Affairs in reply to my communication to him asking his opinion as to the wisdom of opening the Cheyenne Reservation in the near future. You will appreciate, I am sure, the difficulty, if not the impossibility, of making any headway before Congress on an allotment measure against the opposition of the Indian Bureau. I wish, accordingly, that you would arm me with whatever information you can gather in opposition to the views expressed by the Commissioner in his letter. It might be that thus armed, I could change the views of the Commissioner, or failing in that, prevail upon the Secretary to give his support to the allotment plan.

Very truly yours,

[File Copy]

LETTER FROM NORTHERN CHEYENNE CHIEFS AND HEADSMEN TO SENATOR THOMAS J. WALSH OF MONTANA, DATED FEBRUARY 3, 1925, TRANSMITTING TRIBAL PETITION.

(From Appendix A of Petition for Rehearing in Ninth Circuit)

5-1142

DEPARTMENT OF THE INTERIOR

RE: Allotment of the Northern Cheyennes of the Tongue River Reservation.

UNITED STATES INDIAN FIELD SERVICE

Tongue River Agency.

Lame Deer, Mont.

February 3, 1925.

Hon. T. J. Walsh,
U. S. Senator,
Washington, D. C.

Dear Mr. Walsh:

We transmit herewith a petition signed by all of the people belonging to this reservation that we were able to see in the short time allowed. In fact we encountered no opposition whatever, and they were all in hearty accord with the allotment idea. Also we thought it advisable to get you the following data and reasons for allotment so as to arm you for argument with the Indian Office. We can assure you in advance that all the data contained in our letter is authentic;

No. 1. Present Farm acreage----------20,000
No. 2. Available " " ----------80to 100,000.

Crops raised during the past year:
Tonage of hay---------6,000 Tons.
Oats----------34,200 Bu.
Wheat----------37,456 Bu.
Potatoes----------5,000 Bu.
Corn----------3,000 Bu.

Reimburseable--. The flour mill should be reimbursed from grazing funds instead of robbing the Indians for grinding fee, (this mill was promised by a treaty to the Indians). Approximately $33,000 should have been collected by grinding fee in the last eight years and $9.25 was all that was ever turned in toward this flour mill debt up to the time the present Superintendent came here -January 1, 1924.

The Northern Cheyennes are better prepared to receive allotment than the majority of tribes at the time they were allotted. The reason why we make this statement is the facts to be gathered by the farm reports of the last two or three years which are available for inspection.

Heirship Troubles--. Allotment will enhance permanency of future farm activities, and the enhancement of the Five Year Program will solve the heirship trouble in the matter of probating estates which at present is in a very unsatisfactory and chaotic condition.

By making them an allotment they will make greater efforts to improve both their land and conditions of living and therefore become better citizens.

At the present time and under the present conditions they hesitate to carry out to their full capacity their home building and farm and livestock production, not knowing where the boundaries of their lands are, and also not knowing whether they will ever get any such lands because of this being an Executive Order Reservation, and subject to will of the Congress of our Nation.

All Reimbursable tribal debts for sawmills, steam engines, threshing machines, and gasoline tractors and all other reimbursable tribal implements should be paid from the grazing fund or any other funds that may be to the credit of the Northern Cheyennes, as theses funds become available from time to time.

There is a tribal debt for an irrigation ditch on Tongue River of approximately $140,000, and at the present time the above ditch is useless on account of the need for repairs and as a rough estimate, it will take probably about $25,000 to repair it and make it fit for use.

Along with this ditch debt there is a tribal herd called the RC that was purchased with reimbursable funds about $100,000 and is still a debt against the tribe and at the present there is probably 168 head of cattle left in said herd.

Also besides the Tribal debts above mentioned there is an enormous individual Indian reimbursable debt that is hanging over the Northern Cheyennes.

The debts are due June 30, 1925.

But, as the tribe or the Indians individually are unable to meet there obligations we ask that the two last mentioned tribal debts be cancelled, and an extention of twenty-five years be given the Individual Indians so that they may have time to pay their debts to the Government, through the proceeds of their labor and not by the taking of their tribal resources to be applied on the debt.

Under these circumstances the Government should be protected by making an allotment of lands into severalities to those Indians so that in case of death there may be some collateral available by which the debt may be liquidated for the deceased personal obligations, which heretofore has not been possible. There were Indians who contracted some of the debts and are dead and according to the wording of the contract, their heirs are responsible for the debt, and thus the request for allotment to make this protection for the Government.

Also we wish to advise you that when the Commissioner of Indian Affairs was here in Sept. 1923, he promised us people that he would see that we were allotted, and in conclusion we thank you for your aid in getting us allotted and for Mr. Burke to keep faith with us,

Very truly yours,

Chiefs

Eugene Standing Elk - His
Victor Little Chief
Otis Fingers → Mark

Headsmen

Chas Spotted Elk
John Two Moons
David Little White Man
Rufus Rolling-Bull
Chas Feelbull
John Tallwhiteman

attest

TRIBAL PETITION TO SENATOR THOMAS J. WALSH OF MONTANA, JANUARY-FEBRUARY, 1925, SEEKING ALLOTMENT ACT.

(From Appendix A of Petition for Rehearing in Ninth Circuit)

A PETITION TO

THE HON. T. J. WALSH, U. S. SENATOR

We, the undersigned members of the Northern Cheyenne Indian Tribe, of the State of Montana, do hereby humbly beseech you to do all in your power to have a Bill introduced and passed in Congress, to have an allotment of not less than 320 acres of tillable farm land made to each and every member of the Northern Cheyenne Indians.

To reserve all mineral, timber, and coal lands for the benefit of the Northern Cheyenne Indian Tribe, said tribe to have absolute control of same.

As our Reservation is rather small, and as we understand that the old Fort Keough Military Reservation has been abandoned for military purposes, we ask you to try and have it turned over to the Northern Cheyenne Indians so that we may have enough land to give each member of the tribe the above asked for 320 acres.

Ford Woundedeye

Fred Last Bull

Basil Med Elk

William Russell

Wyles Seminole

Thaddeus Rabbitskin

James Singer Hand

Benton A Lowland

[illegible]

[illegible]

James Walks Last

[illegible]

Ancient Medicine Elk

James One Bear

Jim Medicine Elk

Frank Heart

John Lemonde

Chas White Wisty

Jasper Yellow Robe

[illegible]

George Young Bear
Ben Sings
John Rising Sun
Fred Lumpkin
Wesley L. Whiteman
David Big Foot
August Scalp Em.
Richard Timber Hand
Daniel White Shield
James Fong Jaw
Milton L. Whiteman
Frank Redwoman
D. H. Burns
Louis Lemmick
Fred Russell
Bill Fighting Bear
Frank Yellow Fox
James Big Back
Frank Bear Chief
Robert Red Woman

Jno Nellie Robinson
Mr. Ray Young
Mrs Maggie One Bear
Mrs Mary Spotted Elk
Gertrude Medicine Bird
Alice Rising Sun
Mary Rising Sun
Mrs Chas Hart
Jesse Medicine
Sadie Crazy Mule
Mrs Fred Limpy
Mrs Jas M Robinson
Mr Frank Littlewhiteman
Elmore Timber Hand
Adolph Yellow Robe

William Yellowrobe

Tom Sioux

Jas. Killsback

Chas. Hart

Hattie Curly

Mrs Bearenheart

Mrs Highbear

Sadie Littlewhiteman

Mrs Wesley Mcneil

Sally Harris

John Crazy mule

Chas Little Head

Thomas Curly

Jas. Stanley Bear

Whitedirt

John Chubby

Hershey Wolf chief

Chas. Bigdark

Harold Medicine Elk

George Bigmouth

Risingsun

Chas White Dirty

Edward Harris

John Killsontop

John Big Eagle

Samson Medicine

Alfred Spang

David Sweet Medicine

Mrs David Sweet Medicine

George Americanhorse

Austin Jr, Sr

Thomas Baptiste Horse

James Fisher Jr.

Aaron Littlewhitemen

Nicholas Comeshome

Mrs John Strongarm

John Tackes Sr.

John Badger

Ernest M. Clayens

George Ingram
Chas Eastman
Mrs Chas Parr
Jesse Threefingers
Mrs John Shadhead
Malissa Tucker

Jesse Rigsby
Jennie Bernard
Mrs John Blackwolf
John Tallchief
Mrs John Tallchief
Mrs John Rigsby

Chas Bearshead
Chas. Spottedelk
Chas Blackstone
Jerrell Eagleeffether
Mary Hardcastle
Quit a Texas
Rose Little Whiteman
Mrs Chas Young Bear
Mrs Lettie Woodie
Lucy Big Foot
Mr Brockel Mizel
Flora Dog Chief
Annie Medicine

Walter Little Chief

Willie Ridge Bear

Mrs William Standing

Frank Dance

John Dance

Josie Standing

Grandpa Allison Left

Sallie Bates

Mrs Mattie Russell

Irving Blackbird

Phil Yellow Robe

Joseph Running Elk

Mrs Dolton Little Chief

Mrs Ed. Harris

Arthur Chamberlain

James Wood Packer

Mrs Lew Bird Bear

James Bay Mac
Mrs Bay Mac

Wanda White Wolf

Mrs Lena Maubear
Mrs Lena Whitebird
Mrs Rosa Whitewind
Bessie Chapman

Grover Wolfpaw

Robert J. Cairns

Mrs Ethel Sherman
Mrs Jessie Benson
Jennie Kemp

[illegible]

[illegible]

[illegible]

Mary Parker
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Joseph Crazyhand
Bert Two Moons
Ed Woman Leggins his
Jennie Woman Leggins mark his
James Rockroad. — Mark
David Dreamy
Richard Walks Last — his Mark
John Little Mouth
James Big Bear
Mack Rock roads
John Strange Owl — Mark

William Little Wolf
his
Jacob Eagle feather Mark
Bert Wild Hog Mark
Elmer Spring Water
Peter Two Bears — his Mark

James Wilson
Stamper & Lite

Mary Eastman
Margaret Eastman
Adeline Eastman
Mr His Bad Horses
Mrs His Bad Horses
Willie His Bad Horses
Ed Bigby
Frances Blackwhitestone
Mrs Blackwhitestone
Mr Blackwhitestone
Mr Alex Brady.
Josephine Brady.

Frank Pine

Mrs Annie Bigleg

Mrs Grasshopper.
Miss Arapahoe chief
Mrs Emma duo moons

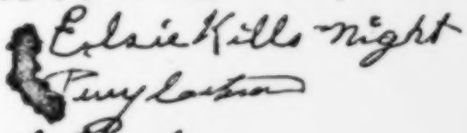
Frank Waters.
Rosa Crook.
John Smith
William Two Moons
Moon Way Road
Alice Yellow Robe.
Fred Ramsdine.
Emma Colhoff.
Frances Two Birds
Nellie Red Leaves

Mrs Fred Ramsdine

Mrs James Bad Boy

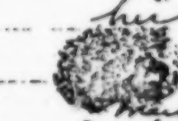
Mrs John Smith

Sarah Prairie bear.



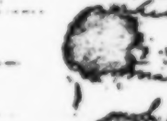
Edgar Kills Night
Tony Eastman
Frank Hart.
of the Bear River
Arthur Shortbull

William Yellowbreast

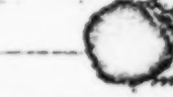


Stanfield Hounds eye
Paul Rednose
Mrs Paul Rednose

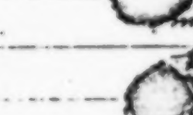
Mrs Arthur Shortbull



Dora Little Hawk.



Bessie Dull Knife



Mrs Ben Limpy

William Redhorses.
Edward Bearquiver

Isaac Grasshopper
Peter Grasshopper
Maud Dagg
Jean Walking Bear
Chas. Walk Bear

Louis Roundstone
Arthur Prairie Bear
Willie Seminole

Oliver Risingsun

Mrs Jean Walking Bird
Seth Walking Bird
Albert Shuler
Minnie Shuler

Mary Hustad Horses
Mrs Bessie Risingsun
James Black Coyote
Little yellow Horse
Wm Braided Locks
Bobbie Braided Locks

Jasper Tall Whiteman
Wm Eagle Bear
Minnie Blindman
John Buffalohorn

Wilson Pine
Mrs John Buffalohorn
Mrs Wilson Pine

James Dagg
Sarah Gray Dog
Fannie Gray Dog
Peter Risingsun

James Deafy
Robert Porcupine
Mrs Philip Risingsun

Mrs Mark Wolfmedo

Robert Little Wolf
Mary Little Wolf

David Little white man.

Paul Little Bear

Paul Shell

Frank Bear chum

Debo Flying

James Hog fisher

Thomas Looks Behind.

Poss Red Top.

John Twobirds

William Redrobe

Cole Hills night

Mr Little wolf

Mrs Little wolf

Miss Little wolf

Eva Little wolf

James Bull

Willie Rising Sun

Jennie Risingsun

John Twomoons

Mrs John Twomoons

Oliver Eaglefeathers

Thomas Whitewind

Floyd Highwalker

Albert Crowe

Stanley Lamewoman.

Robert Ridge Walker

Chas. Yellowrobe

John Teeth

Chas Spotted

Mr Limpy
William Kills Night
Cleas Kills Night
Rosa Kills Night
Chas. Teeth
Mrs Limpy
Mrs Two Birds
Mrs Teeth
Minnie Kills Night
Thomas Medicine Bull
Robert Red Moon
Lizzie Harris
Cub a little bear
Mrs John Teeth
Mrs Many Colt Bull
Young Old Sub

Frank Little Dog
Kate Little Dog

Birney Dist.

1. Robert Standing Elk

2. William Standing

3. Louis Magpie

4. Floyd Fisher

5. Peter Big Head Land

6 Pat Tall whiteman

7 Floyd Clubfoot

8 Ed. Shoulow
David Redneck
John Yo. ung Bird
Charles Lavallee

1 Chester Woodenthigh

2 Red Robe X

3 Mrs. Red Robe X

4 Mary Red Robe +

5 Andrew Whitehawk

6 John Whitehawk

7 Mrs Whitehawk

8 Martin Two Bulls

7 Eleanor Twin

10 Charles Crawling

11 Bessie Two Bulls

12 Ben Shoulderblade
Ed Sitting man
13
14 Louise Big foot.
15 Olive Yellow Eyes
16 Gertrude Yellow Eyes
17 Adam Yellow Eyes.
18 Mrs Adam Yellow Eyes.
19 George White Horse
20 John Red Beads
21 Mrs. Red Beads.
22 Mrs. Hollow Wood

23 Richard Hollow wood.
24 William Yellow Fox
25 Peter Fire Crow
26 Peter Little Bird
27 Rosie Little Bird
28 Hugh White Moon
29 I. W. Wolf
30 mrs Alice White Wolf
31 Charley Little Eagle.
32 Mary Little Eagle.
33 Emilie Little Eagle

34 Joe Brown Bird

35 Mrs. Brown Bird

36 John Two Feathers

37 Mrs Two Feathers

38 Dallas Half Black

39 Rosie wolf Black.

40 H. White Moon.

41 Oliver Sponge

42 Mrs. George Crook.

43 George Crook.

44 Mrs Jennine Foote

45 George Yellow nose

46 Robert Yellow Nose

47 Mrs Annie Yellow Nose

48 Gertrude Yellow Hair.

49 Josephine Yellow fox

50 Ruth Hardrobe

51 L. Little Wolf ind.

52 Richard Wooden Leg.

53 Mrs. Wooden Leg.

54 (Old Lady.) White Hawk.

55 David Tangle Yellowhair

54 Margaret Yellow hair

57 Leo Whitecrow

58 Hugh Spotted Hawk

59 Cecelia Spotted ~~Head~~ Wolf.

60 Lizzie Crazy Medicine

61 Charley white Crow.

62 Bessie Iron Teeth

63 David Walks Carry.

64 Mrs. David Walks Carry.

65 Mary yellow Hair.

66 Franck white wolf.

67 Mrs. Frank white wolf.

68 George Little Whirlwind

69 Mary white Crain

70 Mrs. J. Yellow Hair.

71 Albert ~~H~~ Antelope

72 Eva Howling Antelope

73 Mary Sweet Medicine

74 Marie Sharp nose.

75 Edward Sharp nose

76 William Black Eagle

77 Charley Bear Comesout.

78 Mrs. Ben Comes out.

79 Pat. Spotted Wolf.

80 Mrs. Spotted Wolf.

81 Mrs. Shoulder blade.

82 Alfred Sponge.

83 Bear Coat Leg.

84 Josie Red Neck.

85 Ben Big Head.

86 Clara Big Head

87 Julia Big Head

88 Bigheadmen

89 Mrs. Big Headman.

90 Mrs. Florence Red Bird

91 William Red Bird.

92 Mrs Clara Sponge

93 Mrs. Tangle Horn Elk.

94 Joseph Tangle Horn Elk.

95 Mary Fox.

96 Mrs Threefingers.

97 Gertrude Threefingers

98 Nelson Medicine Bird.

99 Mary Medicine Bird

100 Bryan Harris

101 Henry Standing Elk

102 Mrs Elsie Harris

103 Henry Little Coyote

104 Mrs. Chasing Bear

105 Mrs. Willis Chasing Bear.

104 Mrs. Big Crow.

107 Florence Chasing Bear.

108 Eugene Tangle Yellow hair

109 Chas. Big headman

110 White Big Foot.

111 Willis Chasing Bear

112 arthur Woodenthigh

113 James Twins

114 Bessie Twins

115 Lucy Sitting man.

116 Mary Crawling

117 William Bighead man

118 Agnes Bighead man

119 Mrs. Woodenthigh

120 Henry Whitewolf

121 Chas Lone Wolf.

Otis Fingere — Chief

Colonel Hardrobe — Chief

Agness L. Spang

Carl Wolfrom

Vera Burns

Geo. E. Burns

Geo. Sherman Jr.

Mrs Chas Longjaw

Mrs Frank Redwoman

Mrs Geo Armstrongcane Sr.

Mrs Chas Littlehead

Mrs Amelia Killsback

Mrs Tom Scout

Witnesses

Milton L Whiteman

Alex Spotted Crow

Gross White Crow

Augustus Spotted: